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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

GARY ADAMS AND GAYLE
ADAMS, and their marital
community,

Plaintiffs,

vs.

UNITED STATES OF AMERICA

Defendant.

No.

COMPLAINT FOR DAMAGES
(FTCA)

I. PARTIES

1. Plaintiffs Gary Adams and Gayle Adams are now and were, at all times material hereto, husband and wife, and residents of Grant County, in the Eastern District of the State of Washington.

2. All acts and omissions herein complained of occurred in the Eastern District of the State of Washington.

II. JURISDICTION AND VENUE

3. This Court has original jurisdiction over this civil action and personal jurisdiction over Defendant pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b).

4. Venue in this Court is proper pursuant to 28 U.S.C. § 1402(b).

III. FACTS

5. On April 29, 2016, Plaintiff Gary Adams was involved in a rollover accident while operating an ATV off-road, as a result of which, he landed on his left shoulder. Plaintiff Gayle Adams drove him to the Veterans Administration Hospital in Spokane, Washington, where he was examined in the Urgent Care department.

6. Among Plaintiff Mr. Adams' injuries were a separated shoulder and an undetermined number of broken ribs. In addition, three x-ray films of Mr. Adams' left shoulder area were taken which demonstrated a posterior dislocation of the left humeral head. The VA Urgent Care center referred Mr. Adams to Sacred Heart Medical Center in Spokane, Washington for reduction of the dislocated humeral head, and Plaintiff Gayle Adams drove Mr. Adams to Sacred Heart, where the reduction was accomplished that same day.

1 7. On May 6, 2016, Plaintiff Mr. Adams presented for follow-up
2 care at the Veterans Administration facility located in Wenatchee, Washington.
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4 He was seen by Dr. John S. Mitchell, his primary care physician. Dr. Mitchell,
5 without performing a physical examination or doing anything else to determine
6 the extent of the damage to Mr. Adams' shoulder, prescribed a course of
7 physical therapy, and made no further arrangements for follow-up with his
8 office.
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12 8. At all times material hereto, Dr. John S. Mitchell was an
13 employee of the Department of Veteran Affairs, which is a federal agency of
14 Defendant, and was acting within the scope of his employment at the time he
15 provided medical care to Plaintiff Gary Adams.
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18 9. Upon completion of the prescribed course of physical therapy, in
19 August, Plaintiff Mr. Adams did not feel that he had experienced any
20 significant improvement with respect to his shoulder, and requested another
21 appointment with Dr. Mitchell. On September 15, 2016, Plaintiff Mr. Adams
22 presented back to Dr. Mitchell, who then referred Mr. Adams for an MRI of
23 his left shoulder, which was scheduled for October 13, 2016.
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27 10. Shortly after the scheduled MRI was performed, Dr. Mitchell sent
28 a letter to Plaintiff Gary Adams, in which Dr. Mitchell stated the following:

1
2 “Dear GARY WILLIAM ADAMS:

3 Your MRI shows a lot of damage in your shoulder.
4 This will require orthopedic evaluation and treatment.
5 If you would like for me to enter a consult for Seattle
6 VA orthopedics to address this contact us at the CBOC
7 and I will do so.

8 Here are the results of your recent tests:

9 Radiological Exams:

10 The results to your recent Imaging examination was:

11 Impression:

12
13 1. Massive rotator cuff tear with complete full-
14 thickness tears of the supraspinatus, infraspinatus,
15 and subscapularis tendons. The tendons are
16 retracted to the level of or just beyond the
17 glenohumeral joint margin and there is associated
18 mild fatty atrophy of the supraspinatus and
19 infraspinatus muscles.

20 2. The completely subscapularis tendon tear allows
21 for medial dislocation of the Long head biceps
22 tendon into the glenohumeral joint anteriorly. There
23 is associated modest biceps tendinosis but no
24 evidence of focal tearing.

25 3. Grade 3 articular chondral loss of the glenoid
26 articular fossa.”

27 11. After receiving the letter from Dr. Mitchell, Plaintiff Mr. Adams
28 presented back to the Veteran Administration and was referred to orthopedic

1 surgeon, Dr. James Dahl. On December 9, 2016, after an examination and
2 review of the October 13 MRI of Plaintiff Mr. Adams' shoulder, Dr. Dahl
3 advised Mr. Adams that, given the amount of time that had passed since the
4 initial injury, it might not be possible to surgically repair his rotator cuff tear
5 and retraction of the muscles and tendons that could be seen on the MRI.
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9 12. Thereafter, on February 1, 2017, Plaintiff Gary Adams presented
10 to orthopedist, Dr. Jeremiah Malachi Clinton, in Spokane, Washington, for a
11 second opinion. After a physical examination and review of the MRI of Mr.
12 Adams' shoulder, Dr. Clinton advised Mr. Adams that the "massive tear" of
13 Mr. Adams' rotator cuff was not repairable, "given its chronicity and level of
14 retraction."
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18 13. Plaintiff Mr. Adams is unable to lift his left arm above his naval
19 and has experienced a loss of arm strength. Mr. Adams also experiences
20 numbness in the fingers of his left hand, and his shoulder grates and grinds
21 when he attempts to move it. Mr. Adams takes pain medication on a daily
22 basis.
23
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26 14. Plaintiff Mr. Adams is a farmer, rancher and real estate developer.
27 Because of the significant limitations with respect to the use of his left arm,
28 Mr. Adams can no longer perform many of the everyday tasks associated with

1 his work, including feeding and caring for his animals, assisting with
2 construction activities and operating and maintaining equipment. Mr. Adams
3 has had to hire third parties to perform many of these activities. In addition,
4 Plaintiff Gayle Adams has had to take over the performance of some of these
5 activities.
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9 15. Plaintiffs have been married for over eight years. Prior to Plaintiff
10 Mr. Adams' shoulder injury, he used to enjoy training young horses, and he
11 and Plaintiff Ms. Adams both enjoyed riding horses and going hunting
12 together. Following Plaintiff Mr. Adams' shoulder injury, he now has
13 significant limitations with respect to the activities Plaintiffs used to enjoy
14 together.
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18 16. Plaintiffs presented the Department of Veteran Affairs with their
19 Notices of Claim dated October 11, 2018. Plaintiffs' Claims were denied.
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21 17. Plaintiffs have exhausted their Administrative remedies in
22 compliance with 28 U.S.C. § 2675.
23

24 **IV. FIRST CAUSE OF ACTION**
25 **(Medical Malpractice as to Plaintiff Gary Adams)**
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27 18. Plaintiffs re-allege and incorporate herein, all allegations set forth
28 in paragraphs 1 through 18 above.

1 19. Defendant, by and through its employee, John S. Mitchell, M.D.,
2
3 in providing medical care to Plaintiff Gary Adams, violated the applicable
4
5 standard of medical care, and was therefore negligent by failing to perform a
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7 physical examination and order radiology in order to determine the full nature
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9 and extent of the damage to Mr. Adams' shoulder while the damage was still
10
11 reparable.

12 20. As a direct and proximate result of, and in consequence of the
13
14 above-described negligence of the Defendant, the damage Plaintiff Mr.
15
16 Adams' shoulder became irreparable due to retraction and atrophy of the rotor
17
18 cuff, tendons, muscles and other tissues.

19 21. Plaintiff Gary Adams is entitled to recover all general and special
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21 damages suffered as a direct and proximate result of Defendant's negligence,
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23 including but not limited to medical expenses, pain and suffering, emotional
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25 distress, loss of enjoyment of life and loss of a chance to recover full or partial
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27 use of his shoulder, in amounts to be proven at the time of trial.

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V. SECOND CAUSE OF ACTION
(Loss of Marital Consortium as to Plaintiff Gayle Adams)

29 22. Plaintiffs re-allege and incorporate herein, all allegations set forth
30
31 in paragraphs 1 through 22 above.

23. Plaintiff Gayle Adams brings a loss of consortium claim as a proximate and legal result of Defendants' negligence, which involves, inter alia, loss of the love and consortium of her marital relationship with Plaintiff Gary Adams.

24. As a direct and proximate result of Defendants' negligence, Plaintiff Ms. Adams has sustained and will continue to suffer a loss of consortium and other benefits in an amount that will be proven at the time of trial, including a loss of love, companionship, comfort, care, assistance, protection, affection, society, moral support, and the loss of the enjoyment of other relations and other incidents incumbent with the husband and wife relationship.

Prayer for Relief

NOW, THEREFORE, Plaintiffs pray for Judgment against Defendant
as follows:

1. For Plaintiffs' special and general damages including but not limited to past, present and future medical expenses, pain and suffering, emotional distress, loss of enjoyment of life, loss of a chance of full or partial recovery and loss of marital consortium;

1 2. For Plaintiffs' reasonable attorney's fees and costs as allowed by
2
3 law and equity; and

4 3. For such other and further relief as the Court may deem just
5
6 and proper.

7 Dated this 2 day of June, 2020.

8
9 RANDALL | DANSKIN, P.S.

10 By: s/ Shane D. McFetridge
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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

| | |
|---------------------|---|
| Shane D. McFetridge | <u>sdm@randalldanskin.com</u> |
| Janet Pryor | <u>jlp@randalldanskin.com</u> |
| Debbie Miller | <u>dkm@randalldanskin.com</u> |

I hereby certify that I caused and have mailed by Unites States Postal Service the document to the following non-CM/ECF participants:
NONE.

/s/ SHANE D. MCFETRIDGE
Attorney for Plaintiffs